

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

LEAH LEE MARQUARDT
4583 Maryland Street
San Diego, CA 92116

Registered Nurse License No. 606743

Respondent

Case No. 2012-745

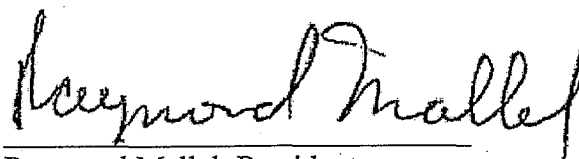
OAH No. 2012061027

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **March 29, 2013.**

IT IS SO ORDERED **March 1, 2013.**



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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Supervising Deputy Attorney General
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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2012-745

13 **LEAH LEE MARQUARDT**
14 **4583 Maryland Street**
15 **San Diego, CA 92116**
16 **Registered Nurse License No. 606743**

OAH No. 2012061027

17 **STIPULATED SETTLEMENT AND**
18 **DISCIPLINARY ORDER**

19 Respondent.

20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 PARTIES

23 1. Louise R. Bailey, M.Ed., RN ("Complainant") is the Executive Officer of the Board
24 of Registered Nursing. She brought this action solely in her official capacity and is represented in
25 this matter by Kamala D. Harris, Attorney General of the State of California, by Judith J. Loach,
26 Deputy Attorney General.

27 2. Respondent Leah Lee Marquardt ("Respondent") is represented in this proceeding by
28 attorney Carol Sleeth, Esq., whose address is: Lewis Brisbois Bisgaard & Smith LLP,
1 Sansome Street, Suite 1400, San Francisco, CA 94104.

3. On or about September 20, 2002, the Board of Registered Nursing issued Registered
Nurse License No. 606743 to Respondent. The Registered Nurse License was in full force and

1 effect at all times relevant to the charges brought in Accusation No. 2012-745 and will expire on
2 April 30, 2014, unless renewed.

3 JURISDICTION

4 4. Accusation No. 2012-745 was filed before the Board of Registered Nursing
5 ("Board"), Department of Consumer Affairs, and is currently pending against Respondent. The
6 Accusation and all other statutorily required documents were properly served on Respondent on
7 June 15, 2012. Respondent timely filed her Notice of Defense contesting the Accusation.

8 5. A copy of Accusation No. 2012-745 is attached as Exhibit A and incorporated herein
9 by reference.

10 ADVISEMENT AND WAIVERS

11 6. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 2012-745. Respondent has also carefully read, fully
13 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
14 Order.

15 7. Respondent is fully aware of her legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
17 her own expense; the right to confront and cross-examine the witnesses against her; the right to
18 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to
19 compel the attendance of witnesses and the production of documents; the right to reconsideration
20 and court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 CULPABILITY

25 9. Respondent understands and agrees that the charges in Accusation No. 2012-745, if
26 proven at hearing, constitute cause for imposing discipline on her Registered Nurse License.

27 10. For the purpose of resolving this matter without the expense and uncertainty of
28 further proceedings, Respondent agrees that at a hearing, Complaint could establish a factual

1 basis for the charges in the Accusation, and that Respondent hereby gives up her right to contest
2 those charges.

3 11. Respondent agrees that her Registered Nurse License is subject to discipline and she
4 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

5 CONTINGENCY

6 12. This stipulation shall be subject to approval by the Board of Registered Nursing.
7 Respondent understands and agrees that counsel for Complainant and the staff of the Board of
8 Registered Nursing may communicate directly with the Board regarding this stipulation and
9 settlement, without notice to or participation by Respondent or her counsel. By signing the
10 stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek
11 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
12 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
13 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
14 action between the parties, and the Board shall not be disqualified from further action by having
15 considered this matter.

16 13. The parties understand and agree that facsimile copies of this Stipulated Settlement
17 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
18 effect as the originals.

19 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
20 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
21 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
22 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
23 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
24 writing executed by an authorized representative of each of the parties.

25 15. In consideration of the foregoing admissions and stipulations, the parties agree that
26 the Board may, without further notice or formal proceeding, issue and enter the following
27 Disciplinary Order:
28

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 606743 issued to Respondent Leah Lee Marquardt is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

Criminal Court Orders: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. **Comply with the Board's Probation Program.** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, Respondent's license shall be fully restored.

3. **Report in Person.** Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or

1 practice as a registered nurse outside of California shall not apply toward a reduction of this
2 probation time period. Respondent's probation is tolled, if and when she resides outside of
3 California. Respondent must provide written notice to the Board within 15 days of any change of
4 residency or practice outside the state, and within 30 days prior to re-establishing residency or
5 returning to practice in this state.

6 Respondent shall provide a list of all states and territories where she has ever been licensed
7 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
8 information regarding the status of each license and any changes in such license status during the
9 term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing
10 license during the term of probation.

11 **5. Submit Written Reports.** Respondent, during the period of probation, shall submit
12 or cause to be submitted such written reports/declarations and verification of actions under
13 penalty of perjury, as required by the Board. These reports/declarations shall contain statements
14 relative to Respondent's compliance with all the conditions of the Board's Probation Program.
15 Respondent shall immediately execute all release of information forms as may be required by the
16 Board or its representatives.

17 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
18 state and territory in which she has a registered nurse license.

19 **6. Function as a Registered Nurse.** Respondent, during the period of probation, shall
20 engage in the practice of registered nursing in California for a minimum of 24 hours per week for
21 6 consecutive months or as determined by the Board.

22 For purposes of compliance with the section, "engage in the practice of registered nursing"
23 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
24 non-direct patient care position that requires licensure as a registered nurse.

25 The Board may require that advanced practice nurses engage in advanced practice nursing
26 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

27 If Respondent has not complied with this condition during the probationary term, and
28 Respondent has presented sufficient documentation of her good faith efforts to comply with this

1 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
2 extension of Respondent's probation period up to one year without further hearing in order to
3 comply with this condition. During the one year extension, all original conditions of probation
4 shall apply.

5 **7. Employment Approval and Reporting Requirements.** Respondent shall obtain
6 prior approval from the Board before commencing or continuing any employment, paid or
7 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
8 performance evaluations and other employment related reports as a registered nurse upon request
9 of the Board.

10 Respondent shall provide a copy of this Decision to her employer and immediate
11 supervisors prior to commencement of any nursing or other health care related employment.

12 In addition to the above, Respondent shall notify the Board in writing within seventy-two
13 (72) hours after she obtains any nursing or other health care related employment. Respondent
14 shall notify the Board in writing within seventy-two (72) hours after she is terminated or
15 separated, regardless of cause, from any nursing, or other health care related employment with a
16 full explanation of the circumstances surrounding the termination or separation.

17 **8. Supervision.** Respondent shall obtain prior approval from the Board regarding
18 Respondent's level of supervision and/or collaboration before commencing or continuing any
19 employment as a registered nurse, or education and training that includes patient care.

20 Respondent shall practice only under the direct supervision of a registered nurse in good
21 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
22 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
23 approved.

24 Respondent's level of supervision and/or collaboration may include, but is not limited to the
25 following:

26 (a) Maximum - The individual providing supervision and/or collaboration is present in
27 the patient care area or in any other work setting at all times.

28 (b) Moderate - The individual providing supervision and/or collaboration is in the patient

1 care unit or in any other work setting at least half the hours Respondent works.

2 (c) Minimum - The individual providing supervision and/or collaboration has person-to-
3 person communication with Respondent at least twice during each shift worked.

4 (d) Home Health Care - If Respondent is approved to work in the home health care
5 setting, the individual providing supervision and/or collaboration shall have person-to-person
6 communication with Respondent as required by the Board each work day. Respondent shall
7 maintain telephone or other telecommunication contact with the individual providing supervision
8 and/or collaboration as required by the Board during each work day. The individual providing
9 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to
10 patients' homes visited by Respondent with or without Respondent present.

11 9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any
12 private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse,
13 or for an in-house nursing pool.

14 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
15 registered nursing supervision and other protections for home visits have been approved by the
16 Board. Respondent shall not work in any other registered nursing occupation where home visits
17 are required.

18 Respondent shall not work in any health care setting as a supervisor of registered nurses.
19 The Board may additionally restrict Respondent from supervising licensed vocational nurses
20 and/or unlicensed assistive personnel on a case-by-case basis.

21 Respondent shall not work as a faculty member in an approved school of nursing or as an
22 instructor in a Board approved continuing education program.

23 Respondent shall work only on a regularly assigned, identified and predetermined
24 worksite(s) and shall not work in a float capacity.

25 If Respondent is working or intends to work in excess of 40 hours per week, the Board may
26 request documentation to determine whether there should be restrictions on the hours of work.

27 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and
28 successfully complete a course(s) relevant to the practice of registered nursing no later than six

1 months prior to the end of her probationary term.

2 Respondent shall obtain prior approval from the Board before enrolling in the course(s).
3 Respondent shall submit to the Board the original transcripts or certificates of completion for the
4 above required course(s). The Board shall return the original documents to Respondent after
5 photocopying them for its records.

6 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with its
7 investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
8 amount of \$4,241.25. Respondent shall be permitted to pay these costs in a payment plan
9 approved by the Board, with payments to be completed no later than three months prior to the end
10 of the probation term.

11 If Respondent has not complied with this condition during the probationary term, and
12 Respondent has presented sufficient documentation of her good faith efforts to comply with this
13 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
14 extension of Respondent's probation period up to one year without further hearing in order to
15 comply with this condition. During the one year extension, all original conditions of probation
16 will apply.

17 12. **Violation of Probation.** If Respondent violates the conditions of her probation, the
18 Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order
19 and impose the stayed discipline (revocation/suspension) of Respondent's license.

20 If during the period of probation, an accusation or petition to revoke probation has been
21 filed against Respondent's license or the Attorney General's Office has been requested to prepare
22 an accusation or petition to revoke probation against Respondent's license, the probationary
23 period shall automatically be extended and shall not expire until the accusation or petition has
24 been acted upon by the Board.

25 13. **License Surrender.** During Respondent's term of probation, if she ceases practicing
26 due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation,
27 Respondent may surrender her license to the Board. The Board reserves the right to evaluate
28 Respondent's request and to exercise its discretion whether to grant the request, or to take any

other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

(1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or

(2) One year for a license surrendered for a mental or physical illness.

14. **Mental Health Examination.** Respondent shall, within 45 days of the effective date of this Decision, have a mental health examination including psychological testing as appropriate to determine her capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by Respondent.

If Respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and Respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, Respondent shall not engage in any practice for which a license issued by the Board is required, until the Board has notified Respondent that a mental health determination permits Respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If Respondent fails to have the above assessment submitted to the Board within the 45-day

1 requirement, Respondent shall immediately cease practice and shall not resume practice until
2 notified by the Board. This period of suspension will not apply to the reduction of this
3 probationary time period. The Board may waive or postpone this suspension only if significant,
4 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
5 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
6 Only one such waiver or extension may be permitted.

7 **15. Therapy or Counseling Program.** Respondent, at her expense, shall participate in
8 an on-going counseling program until such time as the Board releases her from this requirement
9 and only upon the recommendation of the counselor. Written progress reports from the counselor
10 will be required at various intervals.

11 ACCEPTANCE

12 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
13 discussed it with my attorney, Carol Sleeth, Esq. I understand the stipulation and the effect it will
14 have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary
15 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
16 of the Board of Registered Nursing.

17
18 DATED: 11/4/12 *Leah Lee Marquardt*
19 LEAH LEE MARQUARDT
Respondent

20 I have read and fully discussed with Respondent Leah Lee Marquardt the terms and
21 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
22 I approve its form and content.

23
24 DATED: 11/5/12 *Carol Sleeth*
25 Carol Sleeth, Esq.
26 Attorney for Respondent

27 ///

28 ///

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated: 11/5/2012

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General



JUDITH J. LOACH
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 2012-745

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUDITH J. LOACH
Deputy Attorney General
4 State Bar No. 162030
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E-mail: Judith.Loach@doj.ca.gov
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2012-745**

13 **LEAH LEE MARQUARDT**
4583 Maryland Street
14 San Diego, CA 92116

ACCUSATION

15 **Registered Nurse License No. 606743**

Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
21 of Consumer Affairs.

22 2. On or about September 20, 2002, the Board of Registered Nursing issued Registered
23 Nurse License Number 606743 to Leah Lee Marquardt ("Respondent"). The Registered Nurse
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on April 30, 2014, unless renewed.

26 ///

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

RELEVANT DISCIPLINARY STATUTES AND REGULATIONS

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

..."

7. California Code of Regulations, title 16, section 1443, states:

"As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5."

8. California Code of Regulations, title 16, section 1443.5 states:

"A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

"(1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.

"(2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.

"(3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.

...

"(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

"(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided."

COST RECOVERY

9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CAUSE FOR DISCIPLINE

(Incompetence - Medication Error)

10. Respondent is subject to disciplinary action under Code section 2761, subdivision (a)(1) for incompetence as defined in the California Code of Regulations, title 16, sections 1443 and 1443.5, based on the following facts:

1 a. On or about January 29, 2007, Respondent was employed as a registered nurse at the
2 University of California at San Francisco Medical Center ("UCSF"), San Francisco, California.

3 b. Respondent assumed care of W.J., an 88 year-old female patient who had been
4 prescribed Methadone 25 milligrams, once a day, to be administered in liquid form by a feeding
5 tube.¹ Respondent withdrew a multidose vial of Methadone from the Pyxis at UCSF that
6 contained 10 milligrams of Methadone per milliliter. Respondent charted administering
7 25 milliliters of Methadone to W.J. at 9:00 a.m., on January 29, 2007, an amount that was ten
8 times the prescribed dose.

9 c. At approximately 7:45 p.m., on January 29, 2007, W.J. coded and was unable to be
10 resuscitated.

11 PRAYER

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Board of Registered Nursing issue a decision:

14 1. Revoking or suspending Registered Nurse License Number 606743, issued to Leah
15 Lee Marquardt;

16 2. Ordering Leah Lee Marquardt to pay the Board of Registered Nursing the reasonable
17 costs of the investigation and enforcement of this case, pursuant to Business and Professions
18 Code section 125.3; and

19 3. Taking such other and further action as deemed necessary and proper.

20 DATED: June 15, 2012

21 for LOUISE R. BAILEY, M.ED., RN
22 Interim Executive Officer
23 Board of Registered Nursing
24 Department of Consumer Affairs
25 State of California
26 Complainant

27 SF2012204584

28 ¹ Methadone is opiate analgesic that is prescribed for the treatment of moderate to severe pain. Known side-effects include a decreased respiratory rate (slowed breathing) and an irregular heartbeat, either of which can be life-threatening.

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